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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Franciscus Theodorus Cornelis GEERTS

Appl. No. 09/767,496

Filed: January 24, 2001

For: **A VEHICLE FOR DETERMINING THE CLIMATE**

Confirmation No. 2695

Art Unit: 2632

Examiner: La, Anh V.

Atty. Docket: 04132.0096.PCUS00

RENEWED PETITION UNDER 37 C.F.R. 1.137(b)

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

On March 4, 2008, a Petition for Revival of the above-referenced application was filed. The Decision of Petition mailed September 15, 2008, DISMISSED the petition alleging that the statement of unintentional delay was deficient. Pursuant to 37 C.F.R. § 1.137(e), Petitioner requests reconsideration of its Petition for Revival.

In particular, on March 4, 2008, Petitioner filed a Petition to Revive under 37 C.F.R. § 1.137(b). This Petition included the requisite fee, the requisite Response, a Declaration in Support of Petition to Revive from Mr. Michael Bell, the current attorney of record, regarding the unintentional delay from the time that he was made aware of it by the present assignee, and a Declaration in Support of Petition to Revive from Mr. Frans J.A. de Groen, representative of the Assignee, regarding the unintentional delay from the due date of the required reply to the outstanding Office Action. A Revocation of Power of Attorney and New Power of Attorney and Change of Correspondence Address was filed on April 23, 2008.

The Petition to Revive was dismissed allegedly on the grounds that the delay was not satisfactorily shown to be unintentional for the periods of (1) the delay in reply that originally resulted in the abandonment, and (2) the delay in filing an initial petition pursuant to 37 C.F.R. §

1.137(b) to revive the application. Petitioner believes that sufficient evidence that the entire delay was unintentional was provided with the Petition filed on March 4, 2008. Prior counsel for Petitioner, Mr. Penrose Albright, is deceased and is not available to execute documents attesting to the unintentional abandonment and delay in filing a petition to revive. However, Petitioner filed a Declaration in Support of Petition to Revive from Mr. de Groen, representing the Assignee of record, along with a Declaration from Petitioner's present counsel, Mr. Bell. The facts in these declarations sufficiently establishing that the delay was unintentional under 37 C.F.R. § 1.137(b).

Submitted herewith are the Renewed Petition to revive of the above-referenced application, including, (A) a copy of the Petition to Revive under 37 C.F.R. § 1.137(b) filed on March 4, 2008, which included the Declaration of Mr. Bell, Declaration in Support of Petition to Revive, including Statement of Unintentional Delay and signed by the Assignee of Record, and a copy of the Response to Office Action; (B) correspondence Petitioner to Mr. Albright dated June 5, 2003; (C) status inquiry correspondence from Petitioner to Mr. Albright dated November 24, 2005; (D) correspondence from Mr. Albright to Petitioner dated December 2, 2005; (E) status inquiry correspondence from Petitioner to Mr. Albright dated March 8, 2007.

As to delay period (1), Petitioner's prior counsel, Mr. Albright, filed a Notice of Appeal to an outstanding Office Action on April 23, 2003, before the deadline of response. See Paragraph 9 of March 4, 2008 Declaration of Mr. Bell in Exhibit A ("Bell Declaration"). In a correspondence dated June 5, 2003, Petitioner requested a Request for Continued Examination to be filed. See Exhibit B, June 5, 2003 correspondence from Petitioner to Mr. Albright. A Request for Continued Examination was never filed and the case went abandoned without Petitioner's knowledge. See Paragraph 4 of March 3, 2008 Declaration of Mr. de Groen's declaration in Exhibit A ("de Groen Declaration"). A Notice of Abandonment was issued on July 13, 2004. There is no record of the Notice of Abandonment being forward to Petitioner. See paragraph 11 of Bell Declaration. Petitioner never intended to allow the application to go abandoned. Accordingly, Petitioner has sufficiently shown pursuant to 37 C.F.R. § 1.137(b) that the delay in the reply to avoid abandonment was unintentional.

As to the delay period (2), Petitioner, believing the application to be in good standing, sent a status inquiry correspondence to Mr. Albright on November 24, 2005. See Exhibit C, November 24, 2005 correspondence from Petitioner to Mr. Albright. In a reply dated December 2, 2005, Mr. Albright informed Petitioner that he would be filing a Petition to Revive the application. See Exhibit D, December 5, 2005 correspondence from Mr. Albright to Petitioner. Thus, Petitioner believed that a petition had been filed to revive the application. Another status inquiry correspondence from Petitioner was sent to Mr. Albright on March 8, 2007. See Exhibit E, March 8, 2007 correspondence from Petitioner to Mr. Albright. Mr. Albright never responded to this inquiry.

Petitioner, having relied on Mr. Albright's promise to file a petition, did not discover that a petition had not been filed until after Mr. Albright's death. The files for the application were picked up from Mr. Albright's son on February 4, 2008 and received by Mr. Bell on February 8, 2008. See Paragraphs 6-7 of Bell Declaration. After the files had been transferred, it was discovered that, contrary to what Petitioner had been led to believe, prior counsel had not filed a Petition to Revive. See Paragraph 18 of Bell Declaration. After this discovery, due diligence was taken to file the Petition to Revive as soon as possible. Accordingly, Petitioner has sufficiently shown pursuant to 37 C.F.R. § 1.137(b) that the period of delay between discovery of abandonment and the filing of the petition was unintentional.

Petitioner believes that the Petition to Revive filed on March 4, 2008, including the Bell Declaration and de Groen Declaration, was sufficient to show that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional. Additionally, Petitioner has included Exhibits B-E as further evidence in support of the petition. Thus, Petitioner respectfully requests that the dismissal be reconsidered and this Renewed Petition be granted.

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Respectfully submitted,

Michael J. Bell (Reg. No. 39,604)

Date: November 12, 2008

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